

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

HILDA L. SOLIS, Secretary of Labor,)
United States Department of Labor,)
)
Petitioner,)
)
v.) Civil Action No.:
)
PULTEGROUP, INC.,)
)
Respondent.)

**SECRETARY OF LABOR’S PETITION FOR
ENFORCEMENT OF ADMINISTRATIVE SUBPOENA *DUCES TECUM***

Petitioner Hilda L. Solis, Secretary of Labor, United States Department of Labor, (“Secretary”) by and through her counsel, pursuant to Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, *et. seq.*, (hereinafter “the FLSA” or “Act”), applies to this Court for an Order requiring respondent PulteGroup, Inc. to show cause, if any it has, why it failed to appear and produce the records, papers, and documents requested as set forth in the Subpoena *Duces Tecum* issued by the Acting Regional Administrator, Wage and Hour Division, United States Department of Labor, and duly served upon respondent PulteGroup, Inc.

I

Jurisdiction to issue the Order prayed for herein is conferred upon this Court by Section 9 of the Act, 29 U.S.C. 209, and by Sections 9 and 10 of the Federal Trade Commission Act of 1914, as amended (15 U.S.C. 49, 50)(hereinafter “the FTC Act”).

II

Section 11 of the FLSA authorizes the Secretary to investigate and gather data regarding “conditions and practices of employment in any industry subject to this Act....as he may deem

necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act.” 29 U.S.C. 211. Section 9 of the FLSA further provides that sections 9 and 10 of the FTC Act (15 U.S.C. 49, 50), relating to the production of documents, *inter alia*, are applicable to the Secretary for purposes of investigations under the FLSA. 29 U.S.C. 209. Section 9 of the FTC Act provides authorized agents shall have access to documentary evidence of “any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.” 15 U.S.C. 49.

III

A. Karen R. Chaikin is the Acting Regional Administrator of the Wage and Hour Division, United States Department of Labor, who, among others, has been delegated the authority by the Secretary to issue administrative subpoenas under the Act. Secretary's Order 5-2010, § 5.C., 75 FR 55352 (Sept. 10, 2010).

B. Timolin E. Mitchell is the District Director of the Detroit District Office of the Wage and Hour Division, United States Department of Labor.

IV

Respondent PulteGroup, Inc., at all times referred to herein, is and was a Michigan corporation with an office and place of business located at 100 Bloomfield Hills Parkway, Suite 300, Bloomfield Hills, Michigan 48304, within the jurisdiction of this Court.

V

In order to conduct a thorough investigation into the wages, hours and other conditions and practices of employment, pursuant to section 11 of the FLSA, Wage and Hour investigators

regularly review, copy and/or transcribe information from employers' records including, but not limited to, payroll records and records of hours worked, question and interview employees, and collect and review other relevant data relating to compliance by employers under the Act.

VI

Pursuant to the power vested in her as Acting Regional Administrator of the Wage and Hour Division, United States Department of Labor, Karen R. Chaikin signed and issued a Subpoena *Duces Tecum* requiring respondent PulteGroup, Inc., to appear before Timolin E. Mitchell, District Director of the Wage and Hour Division, United States Department of Labor, 211 W. Fort Street, Suite 517, Detroit, MI at 11:00 a.m. on the 23rd day of January 2012, and then and there to testify and produce designated books, records, and documents, listed on Attachment A to the Subpoena *Duces Tecum*, concerning matters within the scope of an investigation being conducted pursuant to the FLSA, 29 U.S.C. § 211. A copy of the Subpoena *Duces Tecum* is attached hereto and incorporated herein by reference as Exhibit A.

VII

On January 9, 2012, the administrative Subpoena *Duces Tecum* was served upon respondent PulteGroup, Inc. by hand delivering a duplicate original of the subpoena to respondent PulteGroup, Inc.'s Registered Agent, CSC-Lawyers Incorporating Service Company, 601 Abbot Road, East Lansing, MI 48823. See Exhibit A, attached hereto and incorporated herein by reference.

VIII

Prior to the issuance of the Subpoena *Duces Tecum*, the Secretary engaged in a number of attempts to obtain the records from respondent PulteGroup, Inc. The Secretary's attempts to secure the documents by other means is reflected in the various requests and correspondence

exchanged between the Secretary's representatives and respondent PulteGroup, Inc. beginning on August 1, 2011 and continuing through January 6, 2012. (See *Declaration of Richard A. Kordys in Support of Petition for Enforcement of Subpoena Duces Tecum* which is attached hereto and incorporated herein by reference as Exhibit B and Exhibits 1-11, attached thereto). As a result of the failure of respondent PulteGroup, Inc. to produce the documents requested, the Subpoena *Duces Tecum* was issued and served on respondent PulteGroup, Inc. as provided herein. See Exhibit A attached hereto and incorporated herein by reference.

IX

Although respondent PulteGroup, Inc. has stated that it would partially comply by producing documents it believes are responsive to requests one and two of Attachment A to the Subpoena *Duces Tecum*, respondent PulteGroup, Inc. has failed to do so and its failure to produce each of the specified books, records, and documents, as required by the Subpoena *Duces Tecum*, has impeded and continues to impede the Secretary's lawful investigation under the provisions of section 11 of the FLSA.

WHEREFORE, the Secretary respectfully requests this Court:

(a) Enter an Order directing respondent PulteGroup, Inc. to appear before this Court, within 30 days from the date of the filing this petition, on a date certain, to show cause, if any it has, why it should not comply with and obey the administrative Subpoena *Duces Tecum* in each and every requirement thereof;

(b) Issue an Order directing respondent PulteGroup, Inc. to appear, at a time and place to be determined by the Court, before a duly appointed official of the United States Department of Labor, and to produce at that time all items and documents listed and described in the administrative Subpoena *Duces Tecum*.

- (c) Issue an Order directing respondent PulteGroup, Inc. to pay all costs and expenses incurred by the Secretary in this matter; and
- (d) For such other just and further relief as may be necessary and appropriate.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

JOAN E GESTRIN
Regional Solicitor

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